GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Dispute. —Industrial Dispute between the Workmen and the Management of Davanagere Cotton Mills, Ltd., Davanagere.

Award of the Industrial Tribunal, Bangalore—Published.

Read the following papers:—

(i) Letter No. I. T. No. 710/68-69, dated 5th July 1968 from Shri A. Panchaksharaiah, Presiding Officer, Industrial Tribunal, Bangalore.

BEFORE THE INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE.

Dated 3rd July 1968.

Present:

Sri A. Panchaksharaiah, B.A. (HONS.), LL.B.,

Presiding Officer.

I. D. No. 172 of 1966

First Party:—	*Second Party*:—
Workmen of Davanagere Cotton Mills, Ltd., Davanagere.	Management of Davanagere Cotton Mills, Ltd., Davanagere.

Appearances:

For the I Party:—Sri M. C. Narasimhan, Advocate, Bangalore.

For the II Party:—Sri S. R. Krishna Murthy, Advocate, Coimbatore.

Reference:

G. O. No. LMA 342 LLD 66, Bangalore, dated 16th November 1966.

AWARD.

By an Order No. LMA 342 LLD 66, dated 16th November 1966, the Government of Mysore have referred an industrial dispute between the workmen and management of Davanagere Cotton Mills, Ltd., Davanagere, under Section 10(1)(d) of the Industrial Disputes Act, 1947, to this tribunal for adjudication. The dispute is in regard to two points. One is with regard to the claim of the workmen for a flat rate increase in the rate of Dearness Allowance by Rs. 20 per month with effect from 1st January 1965. The second point is with regard to the management keeping Karibasappa and Chandrasekharappa under suspension for a longer period than that provided for under the Standing Orders of the company and if not, whether these two workmen are entitled to wages for the suspension period and continuity of service. After the receipt of the Reference it was registered as I.D. No. 172 of 1966 and the parties were directed to file their pleadings. The I Party workmen are represented by Sri M. C. Nasasimhan while the II Party management is represented by Sri S. R. Krishna Murthy.

2. The I Party filed a Claim statement on 19th April 1967. The I Party is the Davangagere Cotton Mills Employees' Association. In the course of the Claim statement the I Party workmen contend that the Union raised a demand for enhancement of Dearness Allowance by Rs. 20 per month as an interim relief, by its letter dated 14th March 1966. The Association subsequently raised a demand for a revision of D.A. at the rate of 0–30 paise per point rise over 100 points in the Consumer Price Index number for Davangere. Conciliation proceedidgs in respect of the Demand Notice dated 14th March 1966 claiming D.A. at a flat rate of Rs. 20 per month per worker were held on 21st March 1966. The conciliation ended in a failure and therefore this Reference. With regard to the claim of the workmen for a revision of D.A. at the rate of 0–30 paise per point of increase over 100 points, the Government has negatived the request of the Union to place the matter for adjudication.

3. The II Party *viz.*, the Davangere Cotton Mills, employs about 4000 workers and it is alleged that the Company is well managed and it is a prosperous concern. It is paying D.A. at the rate of 0-12 paise per point of increase over 100 points in the Consumer Price Index to the workmen, but for the Maistries who draw a basic salary of Rs. 100 and more, the II Party pays D A. at 0-25 paise per point of increase over 100 points in the Consumer Price Index. So far as the D. A. paid by the II Party to its workmen in the month of March 1967 is concerned, it is at the rate of Rs. 51 2½ while it is at the rate of Rs. 106.74 to the Supervisory personnel. The I Party contends that the above rate of D.A. which is linked to the cost of living index is in pursuance of an agreement after the First Textile Wage Board its made recommendation. It is also contended by the Union that this agreement had been terminated. The rates fixed and the manner in which adjustments were made are not in tune which the spirit and tenor of the recommendations of the Wage Board nor are they in line with the manner in which the Wage Board recommendations have been implemented either in Coimbatore or in Bangalore. Consequently the workers have not been able to get what was due to them. Further it is alleged that the rate of D. A. does not adequately neutralise the rise in the cost of living. The total minimum emoluments fall short of the need-based wage level. Nearly 10 to 11 grounds have been set up by the Union to justify its demand for a flat rate dearness allowance increas of Rs. 20 per month. The grounds set out are (1) that the cost of Living has gone up appreciably since 1st January 1965, (2) that D.A. and the emoluments should have been revised after 1st January 1965, (3) that the D. A. scheme does not provide for adequate neutralisation, (4) that there is no rational basis for the two rates of D. A., one at 0.12 paise per point of rise over 100 points for the ordinary workers and other at the rate of 0.25 paise per point of increase over 100 points for Maistries and supervisors drawing a basic salary of Rs.100 and above, (5) that the neighbouring mills are paying higher rate of D. A. and wages, (6) that in places like Bangalore, textile industry is paying higher rate of D. A. on a more

adeqare basis, (7) that the total minimum emoluments are for below the need-based wage, (8) that the productivity of the workmen has increased over the years, (9) that the prosperity of the II party has increased over years, (I) that the II party has the capacity to pay and (1 i) lastly that the establishment has been rationalised, but the workmen have been refused the gains of rationalisation. The workmen therefore pray that in order to meet the ever-rising cost of living they be paid at the rate of Rs. 20/- more per month as D. A. for each worker.

4. The second point of dispute is with regard to the suspension of one Karibasappa and another Chandrashekharappa. These two workmen were suspended pending enquiry with effect from 14th February 1966 to 26th April 1966. Under the standing order of the II party no worker should be kept under suspension beyond 7 days. It is thus claimed by the Union that the suspension of these workers is illegal beyond 7 days. Even up to the date of the final order on 26th April 1966 they were not paid their wages. The I party therefore prays that an award be passed directing the II party to pay wages for the period of suspension from 14th February 1966 to 26th April 1966. As against this, the II party has filed a Counter statement refuting most of the contentions urged in the claim statement. It is contended by the II party that it is not aware of the settlement by the Union. The II Party denies that the D.A. and the wages should have been revised from 1st January 1965. It also denies that the present D.A. system does not provide for adequate neutralisation. It further denies the circumstances alleged by the I party that it is not based on any rational basis. All the grounds set out in the Claim statement for justifying an enhancement of D. A. at the rate of Rs. 20 more, have been denied. The II Party also contends that this Reference is without any jurisdiction because it has been concluded by the settlement. Several other grounds are also raised by the II party to show that this tribunal has no Jurisdiction and that the Union cannot go behind the settlement. All those allegations are the subject matters of issues on which I have already given my

finding negativing the contentions of the II Party. It is therefore not necessary for me to refer to those aspects of the counter statement in great detail. The only remaining point of dispute is the justification of the Union to claim flat rate increase of Rs.20 per month in the D. A. and the capacity of the II Party to meet this demand. The II Party contends that the Union has not made out a case for grant of this relief. The wage structure in this Mill has been evolved by settlement with the Union at different times. It is not open to the Union to go behind the wage structure that is already fixed. The II Party contends that it has not to the required capacity to meet the demands of the Union. The II Party cannot be compared with the Mills at Coimbatore or the mills at Bangalore because it falls within category No. 2 mills. The contention of the I Party *viz.*, that the present emoluments fall short of the need-based wage, is not admitted by the II Party and the II Party contends that it is irrelevant for the purpose of this case. The other allegations in the claim statement are also denied and finally it is submitted by the II Party that the Union has not made out any case for any rise in D.A. It would be ruinous to the II Party if any additional D.A. is granted to the workmen as it would not only completely cripple the sources of the II Party but would drive out the II Party from the field altogether.

5 Regarding the wages for the suspension period beyoud seven days of Karibasappa and Chandrasekharappa, the II Party does not admit the contentions of the Union. Karibasappa had been dismissed even before the date of this Reference. Secondly he has also filed an affidavit before this tribunal on 23rd August 1966 stating that he has no dispute or claim about his dismissal or suspension pending enquiry or otherwise in connection with his employment or non-employment whatsover against the II Party, whereas Chandrasekarappa had tendered his resignation from the service of the II Party on 31st May 1966. This Reference therefore, in regard to these two workmen is infructuous and without jurisdiction. Further

it is alleged that both these workmen had filed application before the Special I Class Magistrate under the Payment of Wages Act 1936, under Section 15 of the said Act on 14th April 1966 for wages for the period of suspension. Chandrasekharappa, withdrew the above application on 6th June 1966 stating that nothing was due to him from the II Party. So also this Karibasappa withdrew his application on 23th September 1966. On this ground also it is contended that the Reference is not maintainable. Thirdly it is alleged that these two workmen were suspended pending enquiry as per Standing Order No. 25 (a) of the II Party Mills, for grave charges of misconduct. The two workmen did not report for work after the lapse of 7 days and the delay in the enquiry was also due to the non-co-operative attitude adopted by these workers. In any view of the case, these two workmen are not entitled to wages for the period of suspension.

6 To the above counter statement, the Union has filed its reply reiterating the allegations in the claim statement. In para 12 of the reply statement, the Union has claimed for reinstatement of these two workmen with back wages. On these pleadings, in addition to the points of dispute in the Reference, I have framed nine issues. As some of these issues related to the question of jurisdiction of this tribunal, arguments were heard on issues 1, 2, 3 and 4. By an order dated 9th October 1967 issues 1 to 4 were disposed of and the findings were all in favour of the I Party. Thereafter the case proceeded for trial on the remaining issues. At the present moment the tribunal is only concerned with issues 5, 6, 7 and 8. At the instance of both the parties, Issues 6, 7 and 8 were amended on 1st September 1967. Issue No. 6 was amended as follows :—

> "Whether the Order of Reference is infructuous and without jurisdiction in view of what is stated in para 12 of the counter statement"?

Issue No. 7 has been re-cast as follows :—

> " Whether the Order of Reference in relation to Chandrasekharappa is infructuous and without

jurisdiction since he has resigned on 30th May 1966 "

Issue No. 8 which is also re-cast, is as follows :—

" Is the Reference not valid because Karibasappa and Chandrasekharappa, have withdrawn the application filed before the Payment of Wages Authority on 23rd September 1966 and 6th June 1966 respectively?"

7 Before discussing the merits or de-merits of the claim for enhanced D.A., I should like to consider the 2nd point of dispute first and dispose it of since it is much easier and it does not admit of any contrversy. There is no doubt that the II Party has admitted that these two workers were kept under suspension beyond 7 days, but the II Party has sought to justify this action on the ground that the enquiry was delayed mainly on account of the attitude adopted by these two workmen. The management issued charge sheets to both these workmen for misconduct against them. The whole enquiry papers have been filed by the management before this tribunal and they are marked as Ex. M22 series. At page 61 of the enquiry report the Enquiry officer has observed that these two workmen were responsible for the witness Devendrappa not appearing before the Enquiry officer. At page 43 of the Enquiry records Devendrappa has given his complaint stating that these two workmen *viz.*, Karibasappa and Chandrasekharappa threatened to break his bones if ever he entered Davangere City. So also at pages 45 and 47 his complaint against these workmen threatening is seen. This Devendrappa, was the important witness for the enquiry and the management could not have completed the enquiry without his evidence. Therefore the delay, if at all, in the conclusion of the enquiry is mainly due to these two workmen. There are decisions of the Supreme Court to show that when the workers who have been charge-sheeted for misconduct do not co-operate with the enquiry and on the other hand create obstacles in the conclusion of the enquiry, they would not be entitled

to the wages for the period of suspension. I would presently quote those authorities. The II Party has also filed an application which this Chandrasekharappa, has filed before the Special 1st Class Magistrate in connection with the wages for the suspension period under the payment of Wages Act. Ex M 25 is a certified copy of the application wherein this Chandrasekharappa, has definitely made a statement before the Special I Class Magistrate on 6th June 1966 that he had no dues to recover from the II party and he wanted to withdraw his application for payment of wages. This fact has not been denied by the Union nor is there any evidence to the contrary. Regarding Karibasappa, also the management has produced a certified copy of his application dated 23rd September 1966. From Ex. M 26 it is clear that this Karibasappa, has appeared through an Advocate. In Ex. M 26 Karibasappa, has stated he is not anxious to prosecute his application for arrears of wages and that this has been done on 23rd September 1966. From this it is amply clear that the workers themselves were not keen in getting wages for the suspension period from the II Party and both of them have made a clear statement that nothing is due to them from the II Party. In spite of this, the Union has taken up the cause of these two workmen and has raised this dispute in which the workmen themselves are not interested. This is a glaring instance of the bad feelings and the bad blood that prevailed between the Union and the II Party about this time. The II Party has also filed a letter dated 30th May 1966 said to have been written by Chandrasekharappa requesting the management to accept his resignation and this letter is not disputed by the Union. Acording to Ex. M. 27 Chandrasekharappa has settled all his accounts and tendered his resignation, and the II Party has accepted his resignation. This is as early as 30th may 1966. The II Party has also filed an Affidavit said to have been given by Karibasappa, before this tribunal on 23rd September 1966. In this Affidavit Ex.M 28, Karibasappa has very clearly and in unmistakable terms said that he has no dispute whatsoever with the II Party and that the dispute must be deemed to have been withdrawn. This Affidavit has been sworn to by

this Karibasappa before the Spl. I Class Magistrate, Davangere and his advocate has identified him. In addition to this the II Party has also filed Ex. M 29 which is an endorsement given to the Union and the II Party by the Under Secretary to Government of Mysore, Labour Department, on 7th August 1967 where in the Government has observed with regard to the dismissal of Karibasappa, that he has given an Affidavit and therefore it is not a fit case for being refered for adjudication. From the above circumstances it is proved conclusively that these two workmen had no right to claim wages for the suspension period. Rightly they gave up their attempt before the Spl. I Class Magistrate. While Chandrasekharappa tendered his resignation, Karibasappa was dismissed from service. In spite o this, the Union contends that the dispute raised on their behalf is valid. Regarding the position of law, where the delay in the conclusion of the enquiry is due to the non-co.operative attitude adopted by the workmen, the Supreme Court has laid down in 1957 I LLJ 17, at Page 23 and has held that the workmen are not entitled to wages for the period of suspension.

8 Regarding the other points *viz.*, that whether this dispute can still be proceeded with in respect of these two workmen, is a point which is as shown above, My finding on the amended issue No. 6 is that the Order of Reference is infructuous and without jurisdiction in view of what is stated in para 12 of the counter statement of the II Party in so far as point of dispute No. 2 is concerned. My finding on the amended issue No. 7 is that the order of Reference in relation to Chandrasekharappa is infructuous and without jurisdiction since he has tendered his resignation on 30th May 1966 under Ex. M-27 and the same has beed accepted. My finding on the amended issue No. 8 is that this Reference is not valid because of another reason *viz.*, that though Chandrasekharappa and Karibasappa have withdrawn the applications filed by them before the payment of Wages Authority on 23rd September 1966 and 6th June 1966 respectively, this Reference has been made and therefore I say that this Reference is not

maintainable in regard to the demand No. 2 as indicated in the Order of Reference.

9. I now proceed to consider demand No. 1 as described in the Order of Reference. Demand No. 1 is as follows:—

> "Whether the workers of the Davanagere Cotton Mills, Ltd., Davanagere, are entitled to an increase in D. A. by Rs. 20 with effect from 1st January 1965? If not, to what other relief they are entitled?

In support of their respective contentions, the I Party has filed affidavits of two witnesses and these two witnesses have been cross-examined by the II Party. Similarly the II Party has also filed the affidavit of two of its witnesses and they have been cross-examined by the I Party. The I Party has filed a number of documents which are marked as W-1 to W-9. The II Party also has filed a number of documents which are marked as Exhibits M-1 to M-39. The documents filed by the II Party are the Balance Sheets from the year 1961-62 onwards up-to-date and a statement of the existing wage scales and comparative statement of the wages paid by the II Party to its workmen and also in other local mills like Shankara Textile Mills, Ganeshar Textile Mills, etc., and also Gokak Mills. The I Party has also filed a number of documents in support of its contention. The Union has sought to justify its claim for increase in D. A. at the rate of Rs. 20 on many grounds which have been set out in the claim statement filed by the I Party. As many as 11 grounds have been set out by the I Party in the claim statement to justisfy the claim for an increase of D. A. by Rs. 20 per month. One of the main grounds is that the cost of living has gone up appreciably since 1st January 1965. The D. A. Scheme which was introduced as a result of the First Wage Board recommendation for textiles industry does not provide for adequate neutralisation and there are two systems of D. A. in the II Party Mill, one with regard to the Maistries and Supervisors who get 0.25 paise per point of increase over 100 points and the other 0.12 paise per point of increase over 100

points for the workmen. The other grounds are that the neighbouring mills are paying a higher rate of D. A. not to speak of the basic wages. I shall discuss every one of these grounds and show how the claim of the I Party workmen is not merely premature but to me appears to be unreasonable, especially when the financial capacity of the II Party to bear this additional burden is taken into consideration. There is no doubt whatsoever that the cost of living has gone up and this fact is admitted even by the II Party. But commensurate with the rise in the cost of living index the financial position of the II party has not improved or has not risen. From the figures filed by the II Party I shall presently show how the percentage of profit is declining. I may here refer to some of the authorities which lay down the principles on which these things will have to be considered. Before considering these authorities I should like to observe here that the present claim is not a claim for revising the wages which have been fixed by an agreement of parties and which are to be effective till 1st January 1965. The agreements are also filed by the II Party which are Exhibits M-1, M-2, M-3 and M-4. From Ex. M-2 to M-4 it is clear that as and when there has been a raise in the cost of living, suitable compensation is made by the II Party by paying more D. A. Prior to 1959 the D. A. paid by the II Party was at a flat rate and it was not linked to the Consumers Price Index. But after the recommendations of the 1st Wage Board, the D. A. was linked to the Consumer Price Index and it has been done not merely on the recommendations of the First Textile Wage Board but also by settlements with the Union. Sri Narasimhan contended that the recommendations of the First Wage Board were not implemented by the II Party in their full implications and adequate neutralisation was not provided for in the system of D. A. prevailing in the II Party. My answer to this is that these matters have been settled by agreement of parties and the I Party cannot be permitted to go behind the terms of this settlement and make out a case that injustice has been done to the workers. With open eyes the Union has entered into settlements with the II Party and has agreed for the linkage

of D. A. at 0.12 paise per point over 100 points and therefore the I Party cannot be permitted now to say that adequate neutralisation is not provided for. Secondly the Reference also does not permit such an argument. The scope of the Reference is strictly laid down in the order of Reference. According to demand No. 1 the II Party is asked to answer a claim for D. A. increase at the rate of Rs. 20 per month with effect from 1st January 1965. The Reference does not seek to re-open the matters which are concluded by settlements. It is no doubt true that the workmen have terminated this settlement but on that ground this tribunal cannot go behind the Order of Reference. So then, if at all, the I Party workmen will have to justify their claim for D. A. increase at the rate of Rs. 20 per month not on the alleged past injustice said to have been done but on the future existing changes and circumstances. They only change which the I Party Workmen have proved is the rise in the cost of living. It has been contended by Sri Narasimhan that in the wages paid including D. A., they do not come anywhere near the need-based wage. In ground No. 7 at page 2 of the Claim statement, the I Party contends that the total emoluments are far below the need-based wage. Forgetting the observations of the 1st Wage Board for Textile industry Sri Narasimhan contends that the wages paid by the II Party fall short of the need-based wage. The question for consideration is whether the textile industry as it stands or as it stood once before, is in a position to pay the need-based wage. The approach of the Board is to be seen at page 16 of the Report in paras 70, 71, 72 and onwards. This is what the Board has observed :—

> "The issue of wages before us is clear. We must honour the Resolution of the 15th Indian Labour Conference which has affirmed the acceptance of a need-based wage to which the lowest paid operative is entitled and which a Board like ours is bound to recommend unless we can show that owing to facts and circumstances which are considered relevant, we are

unable to increase the existing wage to the level of the need-based wage of the formula or at all. We have had no difficulty at all in working out such need-based wage for the several centres of the industry in India, but having done that, it has become evident that the introduction of such need-based wage would be a leap forward of a character that the industry would not be able to support. We refrain from going here into a detail of calculations of the need-based wage, not because we have any doubts or reservations about them but because we feel that no useful purpose will be served by referring to figures at present unattainable by labour in the industry on the basis of standardisation and region-wise."

Having collected the figures, the Wage Board found that it was not very necessary to consider this aspect of the need-based wage bacause the textile industry would not give a need-based wage. The Board proceeds on to say :—

"In the present state of the industry our best efforts towards improvement of wages must fall short of the need-based wage of the formula. But there is the step forward which is contemplated in the context of the Resolution and therefore we have had to examine all the relevant factors which bear on business of this industry, its performance in the past, its present condition and the normal expectations of the future in order to ascertain how far we may travel, if at all, towards filling the gap between the present wage and the need-based wage of the formula. Such an investigation is necessarily a complex undertaking. A mass of evidence has been either presented to us or collected by our office. If we do not refer to each and every argument or to all the facts and figures and calculations it must not be taken to mean that we have not

considered them. Our decisions are based on a very careful consideration of all the pleas advanced under the data available."

The Board has also observed the position of the textile industry. Out of the 511 Mills in India, nearly 10 per cent or so of the Mills are closed down and probably an equal number may be in danger of extinction. So was the position at the time of the First Textile Wage Board. But the present day position is still worse. According to the information available from the newspapers and also from the Government bulletines, more than half the textile mills have closed down owing to several difficulties of finding the nancial resources or finding an attractive market for the goods manufactured and of finding extremely costly machinery, and at the same time the ever increasing cost of the wage bill. This is the observation of the First Wage Board about the fate of the textile industry. Keeping these observations in mind, we have to proceed in this case to find out whether the contentions of the I Party to the effect that the II Party has to provide the need-based wage to its workers, is justified or not. In view of the difficulties experienced by the textile industry, the attainment of a need-based wage still remains to be a dream.

10. The grievance of the Union in this case appears to be that there has not been sufficient neutralisation by the payment of D. A. There is no evidence produced by the nion to show to what extent the neutralisation is not sufficient and to what extent it should be raised, if it should be raised at all, there is absolutely no evidence. The only thing that the Union has done is that it has pointed out to some Mills like the Gokak Textile Mill and the Krishnarajendra Mill, for purposes of comparison and for purposes of deriving inspiration from those Mills. I shall take up this aspect of the case when I take up the topic of comparison of wages paid in these two Mills and that paid by these Mills. I have already pointed out above that the II arty has done or it should do to implement the recommendations of the First Wage Board and in doing so it has taken the Union into confidence and with the agreement of

the Union the wage structure including D. A. has been fixed. Being a settlement on an agreed basis, it must be accorded greater sanctity. I have also pointed out above from Ex. M-2 that the wages fixed including D. A. were to remain in force till 1st January 1965 and subsequent to 1st January 1965, if a fresh mode of calculation of D. A. or fixation of wages has to be resorted to, the Union must make out a case for doing so. Having this position as of 1965, this tribunal has to consider if there have been any changes that warrant a revision. Wages may not be revised merely because a dispute is raised. In 1962 (I) LLJ 287, the Supreme Court has observed that the revision of D. A. linked to the Consumer Price Index providing for adjustment may not be revised solely on the ground that the Consumer Price Index has gone up. In the present case the D. A. is linked to the Cost of Living index. Obviously because of this linkage the workmen will be entitled to higher D.A. as the Consumer Price Index goes up and thus they are compensated for the rise in the cost living. The same decision lays down that it does not mean that it can never be revised and it can be revised only if the financial position of the employer permits, but surely not solely on the ground of an increase in the Consumer Price index. I may also refer to another decision of the Supreme Court reported in 1966 (I) LLJ page 1. Therein their Lordships of the Supreme Court have made the following observations :—

"The task of constructing a wage structure of the industrial employees is a very responsible task and it presents several difficult and delicate problems. The claim of the employees for a fair and higher wage is undoubtedly based on the concept of social justice and it inevitably plays a major part in the construction of wage structures. There can be little doubt that if the employees are paid a better wage which would enable them to live in a fair comfort and discharge their obligations to the members of their families in a reasonable way, they would be encouraged to work whole-heartedly and their work will show appreciable increase in efficiency. On the other hand in trying to recognise and give effect to the demand for a fair wage including

the payment of D·A. to provide for adequate neutralisation against the ever increasing rise in the cost of living, industrial adjudication must always take into consideration the problem of the additional burden which such wage structure would impose upon the employer and ask itself whether the employer can reasonably be called upon to bear such burden.

he problem of constructing a wage structure must be tackled on the basis of such wage structure should not be changed from time to time. It is a long range plan and so in dealing with this problem the financial position of the employer must be carefully examined. What has been the progress of the industry in question, what are the prospects of the industry in future, has the industry been making profits and if yes, what is the extent of the profits, what is the nature of the demand which the industry expects to secure, what should be the extent of burden and its gradual increase which the emloyer may have to face. These and other similar considerations have to be carefully weighed before a proper wage structure can be reasonably constructed by industrial adjudication."

Referring to 1966 (I) LLJ 339, their Lordships further observe :—

"Unusual profits made by the industry for a single year as a result of adventitious or unusual losses incurred by it for simlar reasons should not be allowed to play a ajor roll in the calculations which industrial adjudication would make in regard to the construction of a wage structure. A broad and over-all view of the financial position of the employer must be taken into account and attempt should always be made to reconcile the natural and just claims of the employees for a fair and higher wage with the capacity of the employer to pay it and in determining such capacity allowance must be made for a legitimate desire of the employer to make a reasonable profit. In this connection it may also be permissble to take into account the extent of the rise in the price structure which may result from the fixation of a wage structure and the reasonableness of the additional burden which may thereby

be imposed on the consumer. This is one aspect of the matter which is relevant."

Keeping the above principles in mind let me consider as to how far the Union has discharged the burden and how far it has made out a case for imposing this additional burden on the II Party.

11. Mr. M. C. Narasimhan mentioned about two or three instances in which there has been a change in the circumstances after 1st January 1965. According to him there was a change in the structure in the labour force thereby meaning that the number of skilled workers are more than before and the weavers are more. Secondly the capital has increased, business has increased and the resources have increased. Spinning and Weaving both have increased. There has been considerab e amount of rati onalisation, expansion in the Mills of the II Party. Lastly he relied the Director's Reports which according to him have give a glowing tribute to the management and an encouraging picture to the Shareholders. Sri S R. Krishna Murthy appearing for the management contended that the only changes are that the Mill has gone into debt and is earning a far lesser percentage of profits and it has not been able to pay even the minimum bonus of 4 per cent. Further to the advantage of the labour a minimum un-earned 4 per cent has been added by the Payment of Bonus Act, 1965 He has given through the two witnesses examined for the management, the various statistics containing all the information. It will be useful for both the Union and the II Party to refer to these figures and these figures are called out from the Balance sheets. Annexures A and B

to the Affidavits of the two witnesses for the management show the following position :—

ANNEXURE 'A'

Figures in Columns 2 and 3 are lakhs of rupees.

Year	Gross profits as per Reserve Banks definition.	Total capital employed.	Percentage of Gross Profits to total capital employed.
1	2	3	4
1960-61	30.15	131.44	22.94
1961-62	31.45	149.65	21.02
1962-63	62.99	169.69	15.31
1963-64	29.09	219.95	12.77
1964-65	30.18	249.76	12.08
1665-66	31.21	347.55	8.98
1966-67	40.15	371.41	10.81

ANNEXURE 'B'

Figures in Columns 2 and 3 are in lakhs of rupees.

Year	Profit after tax.	Net worth	Percentage of profits after to net worth.
1	2	3	4
1960-61	10.21	62.42	15.85
1961-62	12.34	73.09	16.88
1962-63	8.02	86.01	9.33
1963-64	8.22	117.74	6.98
1964-65	13.17	3.82	10.64
1965-66	14.61	129.36	11.29
1966-67	15.03	38.48	13.02

From these two Annexures it is evident that the Gross profits as per the Reserve Bank's definition for 1960-61 was 30.15 lakhs and the total capital employed for 1960-61 was 131-44 lakhs. The percentage of the Gross Profits to the total capital employed was 22.94 lakhs. From 1960-61 the position of the profit earning capacity has slowly deteriorated though the capital employed has increased. In fact, according to the Annexure 'A' for the year 1965-66 as against the total capital employed as a sum of Rs. 347.55 lakhs, the percentage of Gross Profits on the total capital employed is only 8.98% compared to the year 1960-61 when the percentage of the Gross Profit to the total capital employed was 22.94 lakhs. For the year 1966-67 the Gross Profit as against the total capital employed is a sum of 37.41 lakhs. The percentage of Gross Profits to the total capital employed is only 10.81 lakhs. According to Annexure 'B' the profit after tax for the year 1960-61 is 10.21 lakhs, net worth 62.42 lakhs and the percentage of profit after tax to net worth is 16.85 lakhs. For the year 1966-67 the profit after tax is 18.03 lakhs as against net worth of 138.48 lakhs and the percentage of profit after tax to net worth is only 13.02 lakhs. This is the Reserve Bank methodology adopted by the II party Sri Narasimhan has attacked the Reserve Bank methodology as undertaking only single Purpose statement and they should not be depended upon and should not be looked into. In support of this contention he has referred to 1966 (I) LLJ page 1, at pages 31 to 32. The Supreme Court does not say that the Reserve Bank methodology should not at all be looked into. All that it says is laid down in para 3 at page 32. Putting it in their own words—

> "Our purpose in referring to these comments made by Paten, is to emphasise the fact that industrial adjudication cannot lean too heavily on such single purpose statement or adopt any one of the tests evolved from such statements whi st it is attempting a task of deciding the financial capacity of the employer in the context of the wage problem. While we must no doubt, examine

> the position in detail, ultimately we must base our decision on a broad view which emerges from a consideration of all the relevant factors."

From this it is clear that the Supreme Court has not laid down any law totally rejecting the Reserve Bank methodology. What it says is that industrial adjudication should not lean too heavily on this Single Purpose statement. They will have to be looked into alongwith the other circumstances available in the case. Even if the Reserve Bank methodology spoken to by M.W. 1 Chandrasekharappa is not accepted, there is the other statement which emerges from the various Balance Sheets and the tribunal can proseed purely on commercial lines. These statements are contained in Exhibits M 32 Series A, B and C. According to these statements, Ex. M 32 (*a*) for the year 1960–61, the net worth is Rs. 64,41,983. The profit after tax for this year is Rs. 10,34,575. The percentage of profit after tax to net worth is 16·0 per cent It is only in one year 1961–62 that there is a slight improvement in the percentage of profit after tax according to Ex. M 32–A and it is 17.81 per cent. From the year 1962–63 the percentage of profit after tax to net worth bas gradually deteriorated, and for the year 1966–67, though the net worth is Rs 1,38,47,821 the profit after tax is only Rs. 5,81,100 and the percentage of profit after tax to net worth is reduced to 4·20 per cent. According to Ex. M-32 (B), for the year 1960–61, for the total capital employed in a sum of Rs. 94,73,955, the profits are shown as Rs. 22,81,575, and the percentage of profits to capital employed is 20·41 per cent. For the year 1966–67 the total capital employed is Rs. 28.68.122 and the percentage of profit to capital employed is only 6·32 per cent. For the year 1965–66 it is still less *viz.*, 6·16 per cent though the total capital employed for 1965–66 is Rs. 2,54,23,314. Ex. M 23 (C) shows the position of sales. For the year 1960–61 the sales are to the tune of Rs. 1,81,84,880 and the profits are only 7·65 per cent. For the year 1966–67 though the sales amounted to Rs. 26,59,655, the percentage of profit is only 6·52 per cent while for the previous year 1965–66 as against the sales of

Rs. 2,40,86,403, the percentage of profit is only 6·50 per cent. The percentage of profits to sales will go down to 4·36 per cent if the usual depreciation is provided instead of the straight line method followed for the additions to machinery from 1st April 1965. There is yet another factor which is a sure index of prosperity which will be seen in the application of the Bonus Act formula. Regarding the II Party, the deficit under the formula has steadily increased from 2·3 lakhs in 1964-65 to 21·45 lakhs in 1966-67. The percentage of gross profit has also declined from 22·94 in 1960-61 to 8·9% in 1965-66. From the above figures it is seen that it is a clear picture of the declining fortunes of the II Party mills and there can be no two opinions that the unit is facing terrible adverse conditions. The capacity to pay or bear the additional burden appears to be only a myth.

12. Moreover, during the relevant years a virtually new Weaving Mill has come into existence. Even as early as 1962-63 the management foresaw that depending upon an exclusively Spinning Mill would be rather very dangerous, and therefore a Weaving Mill came into existence. In order to acquire this Weaving Mill, the II party had to incur nearly a loan of 2 crores of rupees with the Financial Corporation. This Weaving Mill and the alternative weaving mills are still in the process of being harnessed. In fact I was taken to this Mill alongwith Sri Narasimhan. My inspection of the Mill disclosed that nearly half of the Mills are lying idle and they are still to be put into production. Surely it is not as if profits would start flowing in immediately such a mill is established. The whole thing would take at least a period of 3 to 4 years to yield anything like a profit and considering that, the argument of Sri Narasimhan that new machines have been purchased and the II Party has started expanding the business, is too premature. There are any number of difficulties in the way of the II Party in this behalf. In addition to heavy debts, new products have to be manufactured, new markets have to be created by incurring heavy advertising and marketing expenses. Machine utilisation has to be progressively

increased and all these things cannot be done in the matter of few months, or even in the matter of few years. Not realising this, the union's glamour for increasing D.A. with retrospective effect is, I should say, too premature. Hardly 50 per cent of the looms have commenced production. This is necessarily for trying out new products and patterns and testing the markets without any return and very often with the attendant losses. In this situation the mills have to find a footing in extremely competitive field and has to meet a lot of cut-throat competition. Thus it is clear that from whatever angle things are viewed, be it the Reserve Bank Formula or the ordinary commercial formula, the mills have become extremely vulnerable and is in a much weaker position than what it was in 1965. The question which the tribunal has to address itself in the present case is, has the II Party the financial capacity to pay more D.A. than it does since last D. A. fixation, and has the Union proved it, is a point that will be relevant for consideration. This principle is laid down in 1962 (I) LLJ page 287. In considering either the fixation of wages or revision of the D. A. one has to look into 1966 (I) LLJ page 118. According to that decision, the D. A. once fixed after taking into consideration the relevant factors, should not be increased in the absence of circumstances justifying an increase. The circumstances contemplated are such as the prosperity of the Unit, advance in the cost of living index, low wages. I have pointed out above that the prosperity of the unit, if at all, is in the reverse direction and the position is still worst with the declining profits from what it was in 1965.

13. Sri Narasimhan argued that all these improvements and rationalisation or modernisation of the Mill are calculated to yield good lot of profits and so much so the present demand for an increase in D.A. by Rs. 20 per month can be met with. In 1962 (I) LLJ 302 at Page 306, it is held that any increase should not be based on expectations of future profits or improvement in the business. An award for increase of wages or D. A. cannot be based on such speculations about the future, which in the present context of the crisis the

industry is facing, its future is extremely doubtful. No doubt, the cost of living has advanced and that cannot solely be the reason for revising the D.A. or the wage structure and in this Case it is hardly so because the D.A. is linked to the Consumer Price Index. With every rise in the cost of living index, the worker is compensated suitably by paying more D.A. In this connection, I should like to refer to some of the exhibits filed by the II Party. Ex. M-33 filed by the Management shows how the D.A. has steadily increased. For the workers, the basic wage was Rs. 34.06 in 1960, and the D.A. was Rs. 12.72 and the total which a worker was getting in 1960 was Rs. 46'78 when the Consumer Price Index was 453.94. In 1968, his basic wage is Rs. 36.06 and D.A. is Rs. 62.52, the total emoluments being Rs. 98.58. The cost of living index is 869 00. From 1960 to 1968, there is a rise in the basic wage by Rs. 2 and a rise in D.A. from Rs. 12 to 62 *i.e.*, Rs. 49'80 and in all the total extra amount which a worker is getting now is Rs. 51.80 more than what he was getting in 1960 The rise in the cost of living index is only by 415.60. For Maistries and Supervisors who are only 15 in number, they were getting in 1960 Rs. 98.28 and Rs. 26.05 D.A., in all the total emoluments of a Maistry was Rs. 124'78, as against the cost of living index of 453'94. In 1968, a Maistry is getting as wages Rs. 100.23 and Rs. 130.28 as D.A. That means his total emoluments are Rs. 230'56 as against the cost of living index at 869'00. It was argued by Sri Narasimhan that there has been a discrimination in regard to the Maistries because they are paid D.A. at the rate of 0.25 paise per point over 100 points whereas the ordinary worker gets only 0'12 paise per point over 100 points. Sri S. R. Krishna Murthy contended that as against the total number of workers at 1940 including the substitutes, there are only 51 persons who are either Maistries or Supervisors. They do not even form 3 per cent of the labour force or their wages do not come to more than 5 per cent of the total wage bill. Ex. M-36 filed by the Management shows the varieties of workers and the categories of employees and their wages D.A. respectively, having regard to the nature

of work done by these Maistries, there is no point in contending as to why they should be paid more. In fact such a discretion is recognised in law and it is available not merely in all the Mills bu in the entire industry. Moreover, the I Party Union itself was a party to the settlement which fixed up this D.A. at 0·12 paise and 0.25 paise, respectively.

14. Sri Narasimhan contended that the wages paid by the II Party Mills are not comparable with those paid by the Gokak Mills or by the K.R. Mills at Mysore. He argued that the local Mills situated in Davangere, *viz.*, the Shankara Textiles and the Ganeshar Textiles, and those that are given in Ex. M-20, cannot be said to be comparative Mills. Further, he attacked Ex. M-20 as having given only the average wages and not the minimum or the maximum. Before taking up this question let me examine Ex. M 20 and find out if the wages paid by the II Party are or not comparable with the local mills at Davangere and whether they can be compared with the Gokak Mills or the K.R. Mills. Col.3 of Ex. M 20 gives the average wage of the II Party and Col. 4 gives the average D.A. per worker per month. Col. 5 gives the total emoluments of a worker according to Col. 3, the II Party is paying an average basic salary of Rs. 64.61 per worker for 26 days of work. The avarage rate of D.A. is Rs. 53.05 per worker per month. The total emoluments each worker gets for 26 working days in a month come to Rs. 117.66 and this is based at 0.12 paise per point over 348 points of the Consumer Price Index at Davanagere for all the workers. The II Party is paying to its Gadag employees Rs. 41·50 basic salary and Rs. 46·20 D.A. and the total emoluments come to Rs.87.70 based on 0.7 paise per point over 100 points of the Consumer Price Index of Bellary for workers getting a basic wage up to Rs. 100. Chandrodaya Mills, Davangere, pays basic wage of Rs. 48.36 and D. A. of Rs 51.24, in all Rs. 99.06 for 26 working days. This is again based on 0.12 paise per point over 348 points of the Consumer Price Index. Ganeshar Textiles, Ltd., pays basic salary of Rs. 60 and D.A. of Rs. 300 This is based on 0.4 paise per point

over 327 points of the Consumer Price Index at Davangere. The other Mills *i.e.*, the Shankara Textile Mill pays a basic salary of Rs. 63.18 and a D.A. of Rs. 51.22, the total emoluments being Rs. 114.40 based on 0.13 paise per point over 381 points of the Consumer Price Index. At this stage, Sri Narasimhan contended that the D.A. paid by Sri Shankara Textile Mills is 0.13 paise per point while the II Party is paying 0.12 paise per point. Calculating at that rate, the difference in D.A. would be roughly about Re. 1 per month. Therefore, Sri Narasimhan contended that Sri Shankara Textile Mills, Ltd., is admitted with a smaller paid up capital with fairly less reserves and less profits but is paying Re. 1 more as D.A. per month. I must here point out that this is an erroneous argument for the simple reason that 0.13 paise per point is paid over 381 points, whereas the II Party pays 0.12 paise per point over 348 points. That is the reason for the discrepancy. The II Party has also shown the other Mills such as Anjaneya Cotton Mills, Sujatha Mills, Nanjangud, K.C.T. Mills, Hubli and the Gokak Mills, and the Nandi Hasabi Mills, Nargund. Here we may leave out of account the other small mills which cannot be compared to the II Party mills. The only mills if at all that can be compared are the Ganeshar Textile Mills and the Shankara Textile Mills, both of which are engaged only in spinning while the II Party is a composite Mill engaged both in spinning and manufacturing of cloth. In the Gokak Mills, the average basic pay is Rs. 67 46 per worker per month while the D.A. is Rs. 56.23 per month, the total emoluments being Rs. 123.69 based on 1.25 paise per point over 73 points of the Consumer Price Index of Sholapur. Admittedly this is based on the award which I myself have passed in I. D. No. dated 22nd August 1967 published in the *Mysore Gazette* on 21st September 1967. I also learn and also there is evidence to show that this award has been challenged in the High Court of Mysore and a stay has been received by this tribunal. Therefore any matter which subjudice cannot be displosed. I may be right or I may not be right but all it depends upon the view of the High Court is going to take on the reasoning adopted

by me. But suffice it for my purpose to say that in that case I have held that the Gokak Mills is a class by itself not comparable with any other unit and it is placed in Bombay region. The Gokak Mills are leading Exporters in specialised products. Besides, for 16 long years virtually there no improvement in the wages of the Gokak Mills. The minimum was fixed only in 1949. The picture in this case is totally different from that of the Gokak Mills where under a series of settlement revision of D.A.and weges has taken place on agreed basis. There is another reason why Gokak Mills cannot be compared or wages paid in the Gokak Mills cannot be compared with the wages or D. A. paid by the II Party Mills. Admittedly as per the classification of the First Textile Wage Board, Gokak Mills falls with Region No. 1 under which the Bombay Mills, Ahmedabad and the Bangalore Mills and the Coimbatore Mills fall. That is one reason why there cannot any comparison between two. The second reason is that Gokak Mills is purely Spinning Mills employing as many as 6000 workers with a capital amounting to several crores and the reserves amounting to several crores and the profits made more than one crore or two per year. As against the purely Spinning Mill the composite Mill suffers from many disadvantages. As between the composite mill and a spinning mill the latter enjoys great advantage over the former because its products i. e., yarn besides being free from price control has a ready subsidised market whereas the manufacture of cotton fabrics is subject to several statutory restrictions and controls including a regid price control on the several varieties of fabrics such as dhoties, saries, long cloth shirting and drill in addition to they being subjected to heavy Excise duty. Besides their marketing has to be done under keen competition. Moreover, like other Spinning Mills in the Region, the Gokok Mills production does not consist merely of cotton yarn but it includes certain specialised type of yarn like Tire Cord yarn catering to the needs of special industrial market of their own choice, very highly remunerative. To compare one instance of the sales figure from out of the statement filed by the I Party, it is seen for the year ending 31st December 1966 the Gokak

Mills sold yarn and waste to the value of Rs. 580·46 lakhs and the combined sales of cloth, yarn and waste effected by the II Party during the corresponding year ending 31st March 1967 are of the order of only 265.09 lakhs. Besides this major disparity between the two mills under comparison, both the paid up capital and the reserves of the Gokak Mills at Rs. 87.86 lakhs and Rs. 137.55 lakhs respectively as on 1st December 1966 were much higher than the corresponding amounts of 72 lakhs of the II Party as on 31st March 1967. In this paid upcapital of the II Party a sum of 18 lakhs is in the form of redemable cumulative preference shares which the II Party is under obligation to redeem between 1967 and March 1979. For this a provision is made by the II Party. Besides, the II party has to discharge a loan of 101·41 lakhs which it has taken as a loan from the Financial Corporation. Regarding Gokak Mills, it has a sound financial basis and is not driven to contract loans. As on 31st March 1967 the II Party had a mortgaged loan of 109·34 lakhs without any provision for its repayment. Besides, the II Party has carried a further liability of Rs. 38·55 lakhs under Deferred payment arrangements with Overseas Suppliers of machineries. All this has been done with the hope of expanding the business and with the hope of earning more money and it necessarily takes fairly long time before the fruits are realised. It is therefore patent that with its much lower paid up capital and reserves than those of the Gokak Mills, it would have been impossible for the II Party to build up a Gross Block of the order of Rs. 229·60 lakhs as on 31st March 1967. From this it is also clear that the external finances borrowing has played a much more important part in the working of the II Party Mills. It is also clear that the Gokak Mills is financially in a happier position than the II Party. Viewed from any point *i. e.*, considering the total number of employees engaged by the Gokak Mills at 6000 compared to the II Party engaging hardly 2000 workers and with sales nearly two to three times more than the sales of the II Party, the Gokak Mills cannot be compared to the II Party.

15. It is argued by Sri Narasimhan that the II Party has built up its Reserves to a considerable extent, but I must here observe that Reserves cannot be flittered away for paying wages or D. A. For the above reason I am of the opinion that Gokak Mills for more than one reason cannot be compared with the II Party Mills. Sri Narasimhan then pointed out that the wages at the K. R. Mills, Mysore can be favourably compared with those prevailing in the II Party Mills. He substantiated his arguments by pointing out that the K. R. Mills is also situated in category No. 2 Region and that mill is paying a higher D. A and higher wage to its workmen. Here again I should like to say that the K. R. Mills cannot be compared with the II Party Mills though both the Mills are situated in the same Region. No doubt the K. R. Mills is also a Composite Mill like the II Party Mill, but both the paid-up capital and the Reserves of the K. R. Mills as on 31st March 1967 were much lower than those of the II Party Mill, being 45.69 lakhs and 11.46 lakhs respectively. As against this, K.R. Mills has an accumulated loss of 15.48 lakhs which could not be adjusted and this was entirely due to the uneconomical and extravagent management in paying off more basic wages and more D A. than the Mills could afford to pay. For the year ending 31st March 1967, the sales of the K. R. Mills are 280.60 lakhs as against sales amounting to 265.10 lakhs in the case of the II Party mills during the same years. Inspite of the magnitude of sales the trading profit for the K. R. Mills for the said year is only 2.43 lakhs while the trading results of the II Party for the same year is 18.09 lakhs. The low trading profit of 2.43 lakhs in the case of the K. R. Mills is entirely due to uneconomical high wage rate obtaining there. The result was that the workers had to meet a threat from the K. R. Mills authorities to close down the Mills, or to agree to a reduction in the wages and D. A. This has been the subject of a decided ase. From the records filed by the I Party and from the vidence of the I Party, it is clear that the K. R. Mills was aying wages and D. A. prior to 1959 at the same level as hose prevailing in Region No. 1 and it could not all of a.

sudden reduce the wages or D. A. It was argued by Sri Narasimhan that the position of the II Party is absolutely safe and in no year it has sustained any loss and therefore it can afford to pay higher D. A. While it is true that the II Party has not incurred any loss in any year and all compliments must be paid to the management for wisely and economically managing its affairs. It is no argument to say that because the II Party Mills has not sustained any loss the workers should be paid more D. A. or more wages than the II Party can afford to pay. Having regard to the principles laid down in 1966 (I) LLJ page 1 at pages 5 and 6 wherein their Lordships observe that there is nothing wrong if an employer desires to make a reasonable profit. After all, all this trouble would not be worthwhile if an employer was not permitted to make a reasonable profit. In order to avoid the payment of higher wages and D. A., if the employers were compelled to sustain losses than the whole industry would be at peril and if anybody is in danger, it would be the labour that would have to face the unemployment situation. Therefore Sri Narasimhan's argument that because the II Party has not sustained any loss in any year, it is bound to pay the D. A. that is asked for, is unsustainable. I have pointed out from the above decisions that neither the Gokak Mills nor the K. R. Mills can be said to be comparable concerns. The latter Mill is obviously following a ruinous policy as a result of which it had reached a point of closing down the Mills due to the most uneconomical policy.

16. Leaving aside these two Mills, the only other Mills that can be compared are the Ganeshar Textile Mill and Sri Shankara Textiles Mills, Davangere. The principles of wage fixation and D. A. have been dealt with in a number of cases of the Supreme Court and the latest one being 1967 (II) LLJ page 55. Their Lordships of the Supreme Court have laid down the guiding principles after reviewing the earlier decisions. They hold :—

> "Fixation of wage structure is always a delicate task and the task is not rendered any the easier because conditions vary from region to region,

industry to industry and establishment to establishment. To cope up with these difficulties certain principles on which wages are fixed, have been stated by the Supreme Court from time to time. Broadly speaking the first principle is that there is a minimum wage which must be paid irrespective of the extent of profits, the financial conditions of the establishment or the availability of workmen in the lower grades. The minimum wage is independent of the kind of industry and applies to all alike big or small."

17. It is not the case of the Union in this case that the II party is not paying the minimum wage. The second principle is that wages must be fair, *i. e.*, sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workmen, but not at a rate exceeding his earning capacity in the class of establishments to which he belongs. Fair wage is not a living wage. It lies between the minimum wage and the living wage which is the goal. Their Lordships have laid down the following principles at pages 58 and 59. They are :—

"In fixing the fair wage, the capacity of the industry to bear the burden of the said wage scale is a very relevant and a very important factor. Before comparing the establishment in question with other establishments in the same trade and in the same region, it would be obviously necessary for the industrial tribunal to compare the establishments in respect of their standing, the extent of labour force employed by them, the extent of their respective customers and what is more important, a comparative study should be made of the profits and losses incurred by them for some years before the date of the award. It is welknown that in fixing the wage structure on a fair basis an attempt is generally

made in assessing the liability imposed on the employer by the new wage structure in trying to anticipate whether the employer would be able to meet it for a reasonably long period in future."

In this connection the application of the principle industry-*cum*-region is important. This principle is that, fixation or revision of scales of wages, pays or D. A. must not be out of tune with the wages, etc., prevailing in the industry or the region. This is always desirable so that unfair competition may not result between an establishment and another and diversity in wages in the region may not lead to industrial unrest. In attempting to compare one unit with the other care must be taken that units differently placed or circumstanced, are not considered as guides, without looking to make adequate allowance for the differences The same is true when the regional levels of wages are considered or compared. In general words, comparable units may be compared but not units which are dis-similar. While disparity in wages in industrial concerns similarly placed leads to discontent, attempting to level up wages without making sufficient allowances for differences leads to hardships. Keeping these principles in mind let us try to find out what would be the additional burden the II Party has to bear in case the demand of the Union were to be granted.

18. According to the demand of the Association, the increase of D. A. at the rate of Rs. 20 per month per worker would involve a burden of Rs. 12,59,223 for the years 1965, 1966 and 1967 and a running burden of Rs. 5,51,366 per year from 1968 onwards including the fringe benefits at 22.1½ per cent. Sri Narasimhan contended that this does not represent the correct additional burden, because, according to him half of this amount can be got back by rebate from the Income-tax authorities. This is clearly not a correct argument at all. If this argument were to be accepted, it will follow that the present wages may have to be doubled. Such contentions have no merit or substance as observed by Justice Mack of the Madras High

Court in the Amalgamation His Lordship observes:—

> "An aspect which struck me forcibly as regards a flat rate of bonus is that under Section 10(x) of the Indian Income-tax Act, payment of bonus or the commission for services rendered is one of several allowances made before taxable profits or gains of business are completed. A generous grant of a flat rate of bonus to all workers therefore is one improvement substantially at the cost of the Union Exchequer and is a burden really on the Consumer Tax payer."

Courts and tribunals in their attempt to extend justice in respect of wage claims, have a duty to consider the results by their award, upon the Government Exchequer even though they are not represented before them. To conclude I should like to say a word or two. It is obvious that the Union has not proved to what extent the present D. A. falls short in respect of neutralisation. It has to be noted that the current entire sum of D. A. which is nearly three times the basic wage drawn by the workmen is already free of all tax burden.

19. From the above discussion and also from Ex. M-20 it is clear that the wages paid by the II Party Mills and the D. A. paid by it, certainly are more than what is paid by the local mills. To conclude, I should like to say that a matter of utmost relevance with reference to any demand for increase in wages is necessarily the condition of the industry. In this case I have pointed out above that the financial position of the II Party is none too happy. Its percentage of profit has reached the lowest ebb and its loans are increasing and the additional burden of over $2\frac{1}{2}$ lakhs of rupees for 1965, 1966 and 1967 cannot be Thrust upon the II Party. So also the future recurring liability of nearly 5 lakhs of rupees every year, I should like to say, the II Party is unable to bear. I must also observe that the II Party is not in a position to take any additional burden by way of increase in D. A. It is no doubt true that with the help of the loans from the Financial Corporation, the II

Party has proceeded on an ambitious Scheme but that Scheme has still to bear the fruit so that the workmen may also have a share in it. But till then the II Party cannot be burdened with this additional increase of D.A. at any rate. Lastly it is seen that the 2nd Wage Board has already completed its sittings and has collected materials and its Report is expected any day within a known future. If and when the Report comes out, surely the I Party workmen can take advantage of that Report. Till then no increase in D.A. can be given.

20. For the reasons stated above my finding on Issue No. 5 is that the II Party has not got the required financial capacity to meet the demand of the I Party workmen in regard to increase of D.A. at the rate of Rs. 20 per month per worker. My finding on deemand No. 1 in the Order of Reference is that the demand for an increase in D.A. at the rate of Rs. 20 per month per worker, or for that matter, at any rate, is unsustainable.

21. In the result, the Reference is rejected. Under the circumstances of the case, each party will bear its own costs.

A. PANCHAKSHARIAH,

Presiding Officer,
Industrial Tribunal,
Bangalore-20
3-7-68.